

1 comment on other loans of significant loans that the  
2 telephone authority has taken out over the years and how  
3 they've been repaid and how they have not impacted on the  
4 amount of, or the rate that is being charged for service.

5 THE WITNESS: In response to that question, I  
6 think we're proudest to say that we've had only one rate  
7 increase in the local service in the last twenty years. And  
8 it's a very valuable service, that local rate with the  
9 amount of extended area of service coverage that we have.  
10 People from 70 miles to the east and all the way to Eagle  
11 Butte and 70 miles to the West of Eagle Butte under that  
12 local call.

13 And in allowing that service in our exchange, I  
14 believe we're the fifth RDA loan section and that very  
15 adequately paid a loan obligation at the same time in  
16 putting state-of-the-art telecommunications in the hands of  
17 our customers. And I think that's very much fitting of the  
18 rest of the people, the rest of the companies that are  
19 involved in this purchase.

20 THE CHAIRMAN: Okay. If there are no further  
21 questions, thank you, Jim.

22 THE WITNESS: Thank you.

23 THE CHAIRMAN: Does the interveners have any  
24 witnesses which they want to sponsor and speak to the Timber  
25 Lake or Morristown Exchange? If not, are there any members

1 of the public here that wishes to make a statement and speak  
2 to the Morristown Exchange?

3 RUBEN SPEIDEL,

4 called as a witness, being first duly sworn,  
5 was examined and testified as follows:

6 EXAMINATION

7 MR. SPEIDEL: My name is Ruben Speidel from  
8 McLaughlin, South Dakota. I'm a Corson County commissioner.

9 My concern on the sale of the Morristown  
10 Exchange is tax loss. U.S. West paid a total of \$9,824.36  
11 annually to Corson County for properties within the city  
12 limits of Morristown, plus, \$26,189.13 in taxes for rural  
13 Corson County. Now, out of that 26,000 that is available,  
14 depending upon the McIntosh Exchange and the Timber Lake  
15 Exchange and depending on where it falls.

16 However, if the Morristown Exchange is  
17 purchased by the Cheyenne River Sioux Tribe and they put it  
18 in trust, the Corson County will lose in the neighborhood,  
19 give or take, of \$36,013 every year in taxes. This is not  
20 an acceptable situation from Corson County. We cannot  
21 afford to lose this amount of taxes.

22 Also what's going on is a Sambo Ranch, which is  
23 a ranch in the south part of Corson County. They are paying  
24 a total of \$18,827.44 in taxes last year. That's what they  
25 paid last year. If Standing Rock purchases this ranch,

RESOLUTION NO. 111-91-4R

**WHEREAS,** the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984), and

**WHEREAS,** the Tribe, in order to establish its Tribal organization; to conserve its Tribal property; to develop its common resources; and to promote its general welfare of its people, has ordained and established a Constitution and By-Laws; and

**WHEREAS,** the Cheyenne River Sioux Tribe Telephone Authority was established pursuant to Tribal Ordinance #24 and, under Article I and Article IV of that ordinance, is vested with the power "to acquire, by purchase or otherwise, and to own and maintain and operate telephone and telegraph lines and telephone exchanges within the State of South Dakota," and

**WHEREAS,** section 214 (c) of the Telecommunications Act of 1996, 47 U.S.C. § 214 (c), and sections 54.201 through 54.207 of the Federal Communications Commission ("FCC") provide for the designation of "eligible telecommunications carriers" by the regulatory bodies having jurisdiction over these carriers for the purpose of directing the flow of federal universal service funding; and

**WHEREAS** the Cheyenne River Sioux Tribe, its members and all residents of the Cheyenne River Indian Reservation will benefit from the continued and uninterrupted receipt of cost recovery from interstate mechanisms established to foster universal service because the amount of cost to be recovered through basic, recurring charges to users will be minimized accordingly, thereby assisting efforts to maintain reasonable basic rate levels; and

**WHEREAS,** the Cheyenne River Sioux Tribe finds that the Cheyenne River Sioux Tribe Telephone Authority has satisfied the requirement for advertising the availability of its services by utilizing standard subscriber notification, public notice and marketing procedures; and

**WHEREAS,** the Cheyenne River Sioux Tribe finds that the Cheyenne River Sioux Tribe Telephone Authority uses its own facilities-based network to provide: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; and (8) access to directory assistance; and

**WHEREAS,** the Cheyenne River Sioux Tribe finds that the Cheyenne River Sioux Tribe Telephone Authority provides toll blocking, but toll control is virtually unavailable within the United States because it requires instantaneous real time call rating. Accordingly, the Cheyenne River Sioux Tribe grants a suspension of this requirement for eligible telecommunications carrier designation to the extent that such a suspension is required.

**THEREFORE BE IT RESOLVED** that the Cheyenne River Sioux Tribe finds that the Cheyenne River Sioux Tribe Telephone Authority has satisfied the conditions necessary for designation as an eligible telecommunications carrier within its local exchange area.

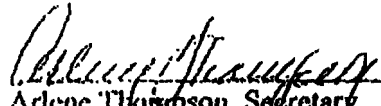
**BE IT FURTHER RESOLVED** that the Cheyenne River Sioux Tribe designates the Cheyenne River Sioux Tribe Telephone Authority as an eligible telecommunications carrier within its local exchange area.

**BE IT FURTHER RESOLVED** that the Cheyenne River Sioux Tribe directs the Board of Directors of the Cheyenne River Sioux Tribe Telephone Authority to take all necessary actions consistent with this Resolution.

**BE IT FINALLY RESOLVED** that the Chairman of the Cheyenne River Sioux Tribe is authorized to implement this Resolution.

**CERTIFICATION**

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members of whom 11, constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held this 5th day of November, 1997, Regular Session, and that the foregoing resolution was duly adopted at such meeting by an affirmative vote of 11 for, 0 against, 0 not voting and 4 absent.

  
Arlene Thompson, Secretary  
Cheyenne River Sioux Tribe

# **BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE FILING BY )</b>	<b>FINDINGS OF FACT,</b>
<b>CHEYENNE RIVER SIOUX TRIBE TELEPHONE )</b>	<b>CONCLUSIONS OF LAW,</b>
<b>AUTHORITY FOR DESIGNATION AS AN )</b>	<b>ORDER AND NOTICE OF</b>
<b>ELIGIBLE TELECOMMUNICATIONS CARRIER )</b>	<b>ENTRY OF ORDER</b>
<b>)</b>	<b>TC97-184</b>

On November 13, 1997, the Public Utilities Commission (Commission) received a request for designation as an eligible telecommunications carrier (ETC) from Cheyenne River Sioux Tribe Telephone Authority (CRSTTA). CRSTTA requested designation as an eligible telecommunications carrier within the local exchange areas that constitute its service area.

The Commission electronically transmitted notice of the filing and the intervention deadline to interested individuals and entities. No person or entity filed to intervene. By order dated November 21, 1997, the Commission set the hearing for this matter for 1:30 p.m. on December 2, 1997, in Room 464, State Capitol, Pierre, South Dakota.

The hearing was held as scheduled. At its December 11, 1997, meeting, the Commission granted ETC designation to CRSTTA and designated its study area as its service area.

Based on the evidence of record, the Commission enters the following Findings of Fact and Conclusions of Law.

## **FINDINGS OF FACT**

I

On November 13, 1997, the Commission received a request for designation as an ETC from CRSTTA. CRSTTA requested designation as an ETC within the local exchange areas that constitute its service area. CRSTTA serves the following exchanges: Dupree (365); Isabel (466); South Dupree (538); La Plant (733); and Eagle Butte (964). Exhibit 1; late-filed amended application.

II

Pursuant to 47 U.S.C. § 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission.

III

Pursuant to 47 U.S.C. § 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution.

#### IV

The Federal Communications Commission (FCC) has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).

#### V

As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411.

#### VI

CRSTTA offers voice grade access to the public switched network to all consumers throughout its service area. Exhibit 1.

#### VII

CRSTTA offers local exchange service including an amount of local usage free of per minute charges to all consumers throughout its service area. Id.

#### VIII

CRSTTA offers dual tone multi-frequency signaling to all consumers throughout its service area. Id.

#### IX

CRSTTA offers single party service to all consumers throughout its service area. Id.

#### X

CRSTTA offers access to emergency services to all consumers throughout its service area. Id.

#### XI

CRSTTA offers access to operator services to all consumers throughout its service area. Id.

#### XII

CRSTTA offers access to interexchange services to all consumers throughout its service area. Id.

#### XIII

CRSTTA offers access to directory assistance to all consumers throughout its service area. Id.

XIV

One of the services required to be provided by an ETC to qualifying low-income consumers is toll limitation. 47 C.F.R. § 54.101(a)(9). Toll limitation consists of both toll blocking and toll control. 47 C.F.R. § 54.400(d). Toll control is a service that allows consumers to specify a certain amount of toll usage that may be incurred per month or per billing cycle. 47 C.F.R. § 54.400(c). Toll blocking is a service that lets consumers elect not to allow the completion of outgoing toll calls. 47 C.F.R. § 54.400(b).

XV

CRSTTA offers toll blocking to all consumers throughout its service area. Exhibit 1; late-filed affidavit.

XVI

CRSTTA does not currently offer toll control. Id. CRSTTA cannot provide toll control due to technology limitations but it will provide the service once the technology becomes available. Id.

XVII

CRSTTA requested a waiver from the requirement to provide toll control service. Id.

XVIII

With respect to the obligation to advertise the availability of services supported by the federal universal service support mechanism and the charges for those services using media of general distribution, CRSTTA stated that it advertises the availability of its local exchange services in media of general distribution throughout its service area. Exhibit 1.

XIX

CRSTTA will offer the Lifeline and Link Up service discounts in all of its service area beginning January 1, 1998, pursuant to the Commission order dated November 18, 1997, in Docket TC97-150, In the Matter of the Investigation into the Lifeline and Link Up Programs. Id.

XX

The Commission finds that CRSTTA currently provides and will continue to provide the following services or functionalities throughout its service area: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling; (4) single-party service; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll blocking for qualifying low-income consumers.

XXI

The Commission finds that pursuant to 47 C.F.R. § 54.101(c) it will grant CRSTTA a waiver of the requirement to offer toll control services until December 31, 1998. The Commission finds that exceptional circumstances prevent CRSTTA from providing toll control at this time due to technology limitations.

## XXII

The Commission finds that CRSTTA intends to provide Lifeline and Link Up programs to qualifying customers throughout its service area consistent with the Commission order dated November 18, 1997.

## XXIII

The Commission finds that CRSTTA shall advertise the availability of the services supported by the federal universal service support mechanism and the charges therefor throughout its service area using media of general distribution once each year. The Commission further finds that if the rate for any of the services supported by the federal universal service support mechanism changes, the new rate must be advertised using media of general distribution.

## XXIV

Pursuant to 47 U.S.C. § 214(e)(5), the Commission designates CRSTTA's current study area as its service area.

## CONCLUSIONS OF LAW

### I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-31, and 47 U.S.C. § 214.

### II

Pursuant to 47 U.S.C. § 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission.

### III

Pursuant to 47 U.S.C. § 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution.

### IV

The FCC has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).

### V

As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411.



VI

CRSTTA has met the requirements of 47 C.F.R. § 54.101(a) with the exception of the ability to offer toll control. Pursuant to 47 C.F.R. § 54.101(c), the Commission concludes that CRSTTA has demonstrated exceptional circumstances that justify granting it a waiver of the requirement to offer toll control until December 31, 1998.

VII

CRSTTA shall provide Lifeline and Link Up programs to qualifying customers throughout its service area consistent with state and federal rules and orders.

VIII

CRSTTA shall advertise the availability of the services supported by the federal universal service support mechanism and the charges therefor using media of general distribution once each year. If the rate for any of the services supported by the federal universal service support mechanism changes, the new rate shall be advertised using media of general distribution.

IX

Pursuant to 47 U.S.C. § 214(e)(5), the Commission designates CRSTTA's current study area as its service area.

X

The Commission designates CRSTTA as an eligible telecommunications carrier for its service area.

It is therefore

ORDERED, that CRSTTA's current study area is designated as its service area; and it is

FURTHER ORDERED, that CRSTTA shall be granted a waiver of the requirement to offer toll control services until December 31, 1998; and it is

FURTHER ORDERED, that CRSTTA shall follow the advertising requirements as listed above; and it is

FURTHER ORDERED, that CRSTTA is designated as an eligible telecommunications carrier for its service area.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 17<sup>th</sup> day of December, 1997. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 17<sup>th</sup> day of December, 1997.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: *Dilaine Kelbo*

Date: 12/18/97

(OFFICIAL SEAL)

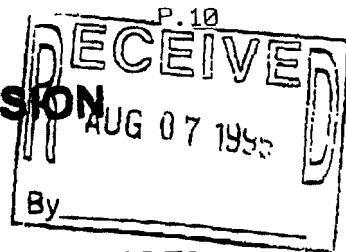
BY ORDER OF THE COMMISSION:

*James A. Burg*  
JAMES A. BURG, Chairman

*Pam Nelson*  
PAM NELSON, Commissioner

*Laska Schoenfelder*  
LASKA SCHOENFELDER, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**



IN THE MATTER OF THE SALE OF CERTAIN	)	DECISION AND ORDER
TELEPHONE EXCHANGES BY U S WEST	)	REGARDING SALE OF THE
COMMUNICATIONS, INC. TO CERTAIN	)	<u>MORRISTOWN EXCHANGE</u>
TELECOMMUNICATIONS COMPANIES IN	)	
SOUTH DAKOTA	)	TC84-122 - MORRISTOWN

**PRELIMINARY STATEMENT**

On December 20, 1994, a Joint Application was filed by U S WEST Communications, Inc. (U S WEST), and twenty telecommunications companies (Buyers) requesting that the South Dakota Public Utilities Commission (Commission) approve the sale by U S WEST of 67 local telecommunications exchanges to the Buyers or their affiliates. Specifically, the filing sought:

1. A declaration that the sale and transfer of the exchanges do not require Commission approval or in the alternative that the Commission knows of no reason why the sale and transfer should not occur; and
2. An order from the Commission that U S WEST's gain from the sale be booked to Account 7350 of the Uniform System of Accounts (USOA) as nonoperating income not available for ratemaking purposes.

The Commission assumed jurisdiction over this docket pursuant to its authority under SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, and 49-31-20. The Commission set an intervention deadline of January 25, 1995. Subsequently, the following parties applied for and were granted intervention: ~~AT&T Communications of the Midwest (AT&T); South Dakota Radio Common Carriers [composed of Pierre Radio Paging and Telephone, Inc.; Vantek Communications, Inc.; B&L Communications; Mitchell Two Way Radio; Nelson Electronics, Inc.; Booker Communications; Dakota Electronics; Rees Communications; A & M Radio, Inc.; Frey's Electronics; and Milbank Communications]; Roger D. McKellips; City of Mobridge; Walworth County; Doug Scott; Alcester Telephone System User's Group [composed of Phyllis Bergdale; Bernard Bergdale; Jay Clark; Cleo Clark; Wendell Solberg; Kathy Solberg; Dennis Jones; Robin Jones; Ronald Treiber; Becky Treiber; Gary McKellips; Deb McKellips; David Broadwell; Kathy Broadwell; Donovan Larson; Marlys Larson; Glenice Pilla; and Larry Pilla]; Midco Communications; LDDS; TeleTech; TCIC; FirstTel; TelServ; MCI; Corson County Commission; Thomas Brunner; Gary Brunner; Deanna J. Mickelson; Marjorie Feder; Duane Odle; Baltic Telecom Cooperative; Barbara Mortenson as an individual and a group of telephone users known as the Henry Users Citizens Group.~~ LDDS later filed a petition to withdraw as an intervenor which was granted by the Commission. On March 30, 1995, Senate Bill 240, later codified as SDCL 49-31-59, became effective. The Commission added this statute to the other statutes under which it had asserted its jurisdiction.

On March 29, 1995, the Commission issued an Order for and Notice of Hearing for six regional evidentiary hearings to be held at various locations throughout the state of South Dakota. Notice of said hearings was given to the public by newspaper publications and radio announcements; personal notice was given to all parties to the docket. Pursuant to said Order of the Commission, and subsequent amended Orders, the following regional evidentiary hearings were held:

1. April 17, 1995, at the City Auditorium, 212 Main Street, Mobridge, South Dakota, for public testimony on the sale of the Selby, Gettysburg, Roscoe, Onida, Bowdle, Morristown, Timber Lake, Lemmon, Eureka, Ipswich, McIntosh, and Mobridge exchanges.
2. April 18, 1995, at the Community Center, 1401 LaZelle, Sturgis, South Dakota, for public testimony on the sale of the Nisland, Newell, and Hermosa exchanges.
3. May 1, 1995, at the St. Mary's Hall, 305 West Third, Winner, South Dakota, for public testimony on the sale of the Winner, Burke, Bonesteel, Reliance, Murdo, Lake Andes, Wagner, Gregory, Witten, Clearfield, Presho, and Platte exchanges.
4. May 3, 1995, at the Lake Area Technical Institute, Student Lounge, 230 11th Street NE, Watertown, South Dakota, for public testimony on the sale of the Webster, Clark, Florence, Hayti, Bradley, Willow Lake, Waubay, Castlewood, Summit, Peever, Veblen, Wilmot, Howard, Oldham, Revillo, and South Shore exchanges.
5. May 4, 1995, at the Johnson's Fine Arts Center, Room 134, Northern State University Campus, Aberdeen, South Dakota, for public testimony on the sale of the Britton, Pierpont, Roslyn, Wessington Springs, Mallette, Bristol, Frederick, Hecla, Doland, Wolsey, and Cresbard exchanges.
6. May 5, 1995, at the Alcester High School Gymnasium, Fifth and Iowa, Alcester, South Dakota, for public testimony on the sale of the Marion, Tyndall, Centerville, Viborg, Lesterville, Tabor, Hudson, Tripp, Parkston, Salem, Alcester, Bridgewater, and Canistota exchanges.

On May 1, 1995, U S WEST and the Buyers filed an amended Joint Application. In its amended Joint Application, U S WEST and the Buyers stated that since the filing of the Joint Application in December, "the sale of several exchanges to certain buyers has been reevaluated by the Buyers." They requested the following changes:

1. In the Agreement with Golden West Telephone Properties, Inc., delete in Exhibit A the Newell exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly;
2. In the Agreement with West River Cooperative Telephone Company, Inc. (Bison), delete in Exhibit A the McIntosh exchange and add the Newell

and Nisland exchanges, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly; and

3. In the Agreement with Cheyenne River Sioux Tribe Telephone Authority, delete in Exhibit A the Nisland exchange and add the McIntosh exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly.

Due to the amended application, the Commission set a new intervention deadline of May 12, 1995. Subsequently, the city of McIntosh and Corson County applied for and were granted intervention. Because the application had been amended, the Commission held another public hearing on May 25, 1995, at the McIntosh School Gymnasium, McIntosh, South Dakota, for public testimony.

At each regional evidentiary hearing, representatives from U S WEST and each purchasing company were present to testify and were available for cross-examination.

On April 5, 1995, the Commission issued a Notice of Hearing setting the final hearing for June 1-2, 1995. All prefiled testimony was required to be filed by May 25, 1995. A pre-hearing conference was held on May 22, 1995.

The final hearing was held on June 1-4, 1995. At said final hearing, 42 witnesses testified and were available for cross-examination, 126 exhibits were offered and received into the record at the hearing, and an additional 19 exhibits were filed by June 19, 1995, which was the deadline set by the Commission for late-filed exhibits.

On June 7, 1995, the Commission issued a Post-hearing Order requesting briefs on certain issues and allowing the submission of Proposed Findings of Fact and Conclusions of Law. On June 19, 1995, the parties submitted late-filed exhibits. On June 23 and July 3, 1995, the parties filed their post-hearing briefs and Proposed Findings of Fact and Conclusions of Law.

On July 13, 1995, at a duly noticed meeting, the Commission unanimously voted to not approve the sale of the Morristown exchange to Cheyenne River Sioux Tribe Telephone Authority (CRSTTA) which proposed to purchase the Morristown exchange through its subsidiary, Owl River Telephone, Inc. (Owl River). With regard to the sale of the Morristown exchange, in conjunction with the sale of all the other exchanges, the Commission has reviewed all exhibits presented at the seven regional evidentiary hearings, and the final hearing occurring in Pierre, and has considered all testimony provided. The Commission having reviewed the evidence of record and being fully informed in the matter makes the following:

#### **FINDINGS OF FACT**

1. U S WEST is a Colorado corporation providing local exchange telecommunications service, interexchange carrier access, intraLATA interexchange telecommunications services, and other telecommunications services throughout South Dakota.

2. On or about December 7, 1994, U S WEST entered into purchase agreements for the sale of 67 local exchanges with 20 local exchange telecommunications companies. On December 20, 1994, U S WEST and the Buyers filed a Joint Application for a Commission Declaration on the Sale and for Proper Accounting Treatment of any Gain. Exhibit 29. U S WEST and the Buyers filed all 20 purchase agreements along with the Joint Application. Exhibits 31-50. One of the purchase agreements entered into was between U S WEST and CRSTTA. Exhibit 32.

3. CRSTTA is a telecommunications company and a division of the Cheyenne River Sioux Tribe. CRSTTA currently provides telecommunications services in South Dakota. Exhibit 22 at page 119.

4. Owl River is a wholly-owned subsidiary of CRSTTA incorporated under the laws of the Cheyenne River Sioux Tribe. Exhibit 22 at page 119. Owl River has no license to do business in the state of South Dakota. Exhibit 22 at pages 145-146.

5. The purchase agreement entered into between CRSTTA and U S WEST states as follows:

Seller and Buyer agree to promptly file any required application and to take such reasonable action as may be necessary or helpful (including, but not limited to, making available witnesses, information, documents, and data requested by the PUC) to apply for and receive approval by the PUC for the transfer of Assets and Authorities to Buyer.

Exhibit 32, Section 6.3, subparagraph D.

6. In the Joint Application filed with the Commission on December 20, 1994, U S WEST and CRSTTA had entered into a purchase agreement where U S WEST proposed to sell the Nisland, Timber Lake, and Morristown exchanges to CRSTTA.

7. A duly noticed public hearing was held at Mobridge, South Dakota, on April 17, 1995, at the City Auditorium, beginning at 8:00 p.m., concerning, along with other sales, the sale of the Timber Lake, McIntosh, and Morristown exchanges. At the time of the hearing, West River Cooperative Telephone, Inc. (West River) was the proposed buyer of the McIntosh exchange. Members of the public testified in opposition to the sale of the Morristown exchange to CRSTTA. The two main concerns of the public were lack of Commission oversight and loss of tax dollars. Exhibit 22 at pages 176-180.

8. A duly noticed public hearing was held at Sturgis, South Dakota, on April 18, 1995, beginning at 7:00 p.m. M.D.T. concerning, along with other sales, the sale of the Nisland exchange. At the hearing, the Buyers announced that CRSTTA would no longer be purchasing the Nisland exchange. Instead, West River proposed to purchase the Nisland and Newell exchanges and CRSTTA proposed to purchase the McIntosh exchange which West River had originally intended to purchase. Exhibit 23 at pages 5-6.

9. The amended Joint Application setting forth the changes in the buyers of the Nisland, Newell, and McIntosh exchanges was filed with the Commission on May 1, 1995. Exhibit

30. Due to the amendment of the Joint Application, the Commission set a new intervention deadline of May 12, 1995. The city of McIntosh and Corson County applied for and were granted intervention. The Commission held another public hearing on May 25, 1995, at the McIntosh School Gymnasium, in McIntosh.

10. On June 1-4, 1995, in Pierre, South Dakota, a final hearing was held concerning all of the proposed exchange sales. Members of the public testified in opposition to and in support of the sale of the Morristown exchange to CRSTTA. Transcript of Pierre Hearing at pages 707-727, 732-737, 770-779.

11. The Morristown exchange is located within the boundaries of the Standing Rock Sioux Reservation and in the states of South Dakota and North Dakota. Exhibit 22 at page 131-132. J. D. Williams, manager of CRSTTA, testified that CRSTTA's subsidiary, Owl River, would be subject to the Commission's jurisdiction in the South Dakota portion of the Morristown exchange, and would be subject to the laws of the Standing Rock Sioux Tribe, and possibly to the laws of North Dakota. Exhibit 22 at pages 131-132.

12. CRSTTA maintains that if the sale of the Morristown exchange to CRSTTA were allowed, the Commission would lose all regulatory control over the Morristown exchange except for the South Dakota portion of the Morristown exchange. Exhibit 22 at page 131-132.

13. CRSTTA does not pay gross receipts taxes on the telephone exchanges it currently operates. Exhibit 22 at page 123. Mr. Williams stated that Owl River will pay gross receipts sales tax on the South Dakota portion of the Morristown exchange. Mr. Williams further stated that the state "may impose its gross receipts tax on the income generated from sales to non-Indians and non-members of the area. However, it has no mechanism whereby to force the tribe to collect the tax. The tribe has a sales tax agreement with the state and a similar arrangement may be possible with respect to collecting a gross receipts tax." Exhibit 22 at page 132.

14. CRSTTA proposed a Memorandum of Understanding which provided that CRSTTA would follow the same regulatory procedures found under South Dakota law. Exhibit 145. However, pursuant to that Memorandum of Understanding, the Commission was given no regulatory oversight.

15. The Commission lacks the authority to enter into a tax agreement with a tribal entity. No tax agreement was reached with the state of South Dakota by the close of the record on June 19, 1995.

16. CRSTTA has refused to waive its sovereign immunity in order to provide the Commission with its statutorily mandated regulation of telecommunications services provided by a telecommunications company within the state of South Dakota.

17. CRSTTA has refused to waive its sovereign immunity with regard to the gross receipts tax agreement that it had proposed to enter into negotiations with the state of South Dakota.

18. Local exchange service provided by a telecommunications company is classified as a noncompetitive service. SDCL 49-31-1.1.

19. The South Dakota State Legislature has charged the Commission with important duties in overseeing telecommunications services within the state of South Dakota and has further vested in the Commission significant powers to protect telecommunications subscribers. SDCL Chapters 49-1, 49-13, and 49-31.

20. If the sale of the Morristown exchange to CRSTTA were approved, CRSTTA would not recognize the Commission as having regulatory authority over CRSTTA and the Morristown exchange, except for the South Dakota portion of the Morristown exchange.

21. Pursuant to SDCL 49-1-17, the Commission is prohibited from approving a sale which would result in the delegation or transfer of powers and duties vested in the Commission. Any delegation of such powers is classified as a Class 2 misdemeanor.

22. Since CRSTTA maintains that there is no enforcement mechanism that would require CRSTTA to pay gross receipts taxes, approval of the sale would also result in the loss of significant tax revenue for cities, counties, and school districts located within the Morristown exchange. Exhibit 96; Exhibit 28 at pages 126-129; Transcript of Pierre Hearing at pages 707-727. In effect, in addition to delegating its own authority, the Commission's action could also result in relinquishing the enforcement authority of the state of South Dakota to collect gross receipts taxes.

23. As CRSTTA has declined to waive its sovereign immunity, the Commission similarly declines to give up its jurisdiction.

24. The Commission rejects the proposed findings of fact and conclusions of law submitted by the parties.

From the foregoing Findings of Fact, the Commission now makes its:

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over U S WEST and CRSTTA and the sale of the Morristown exchange to CRSTTA pursuant to SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, and 49-31-59. At the final hearing CRSTTA contested the jurisdiction of the Commission pursuant to SDCL 49-31-59 by claiming that it was an ex post facto law. This argument is without merit since ex post facto applies only to criminal laws and laws that assess penalties. Delano v. Pettys, 520 N.W.2d 606, 608 (S.D. 1994). Moreover, the Joint Application was amended on May 1, 1995, which was after the passage of SDCL 49-31-59. In addition, the purchase agreement entered into between U S WEST and CRSTTA specifically provides that U S WEST and CRSTTA would cooperate in obtaining Commission approval for the transfer of assets and authority to CRSTTA. Finally, CRSTTA did not contest, at any of the hearings, the jurisdiction of the Commission pursuant to the other statutes under which the Commission asserts its jurisdiction.



2. The hearings held by the Commission relative to this matter were contested case hearings pursuant to SDCL Chapter 1-26.
3. The Commission finds that the approval of the sale of the Morristown exchange to CRSTTA would constitute an improper delegation of authority pursuant to SDCL 49-1-17 and, therefore, this Commission has no authority to approve the sale of the exchange.
4. The Commission lacks the authority to enter into a tax agreement with a tribal entity.
5. The Commission finds that approval of the sale of the Morristown exchange would have significant, adverse tax consequences to the taxpayers located in the cities, counties and school districts within the Morristown exchange due to CRSTTA's position that the state lacks the authority to enforce the collection of taxes on the Reservation.
6. The Commission rejects the proposed findings of fact and conclusions of law submitted by the parties.

Pursuant to SDCL Chapter 1-26, the Commission hereby enters its final decision in this docket. It is therefore

ORDERED that the sale of the Morristown exchange to the Cheyenne River Sioux Tribe Telephone Authority, through its subsidiary Owl River Telephone, Inc. is not approved; and it is

FURTHER ORDERED that the proposed findings of fact and conclusions of law submitted by the parties are rejected.

Pursuant to SDCL 1-26-32, this Order becomes effective 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 31<sup>st</sup> day of July, 1995.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By: <u>Kenneth Stofferahn</u>	
Date: <u>8-1-95</u>	
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Kenneth Stofferahn

KENNETH STOFFERAHN, Chairman

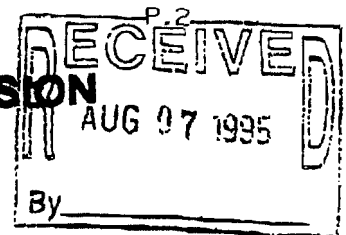
James A. Burg

JAMES A. BURG, Commissioner

Laska Schoenfelder

LASKA SCHOENFELDER, Commissioner

# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA



IN THE MATTER OF THE SALE OF CERTAIN )  
TELEPHONE EXCHANGES BY U S WEST )  
COMMUNICATIONS, INC. TO CERTAIN )  
TELECOMMUNICATIONS COMPANIES IN )  
SOUTH DAKOTA )

DECISION AND ORDER  
REGARDING SALE OF THE  
MCINTOSH EXCHANGE

TC94-122 - MCINTOSH

## PRELIMINARY STATEMENT

On December 20, 1994, a Joint Application was filed by U S WEST Communications, Inc. (U S WEST), and twenty telecommunications companies (Buyers) requesting that the South Dakota Public Utilities Commission (Commission) approve the sale by U S WEST of 67 local telecommunications exchanges to the Buyers or their affiliates. Specifically, the filing sought:

1. A declaration that the sale and transfer of the exchanges do not require Commission approval or in the alternative that the Commission knows of no reason why the sale and transfer should not occur; and
2. An order from the Commission that U S WEST's gain from the sale be booked to Account 7350 of the Uniform System of Accounts (USOA) as nonoperating income not available for ratemaking purposes.

The Commission assumed jurisdiction over this docket pursuant to its authority under SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, and 49-31-20. The Commission set an intervention deadline of January 25, 1995. Subsequently, the following parties applied for and were granted intervention: AT&T Communications of the Midwest (AT&T); South Dakota Radio Common Carriers [composed of Pierre Radio Paging and Telephone, Inc.; Vantek Communications, Inc.; B&L Communications; Mitchell Two Way Radio; Nelson Electronics, Inc.; Booker Communications; Dakota Electronics; Rees Communications; A & M Radio, Inc.; Frey's Electronics; and Milbank Communications]; Roger D. McKellips; City of Mobridge; Walworth County; Doug Scott; Alcester Telephone System User's Group [composed of Phyllis Bergdale; Bernard Bergdale; Jay Clark; Leo Clark; Wendell Solberg; Kathy Solberg; Dennis Jones; Robin Jones; Ronald Treiber; Becky Treiber; Gary McKellips; Deb McKellips; David Broadwell; Kathy Broadwell; Donovan Larson; Marty Larson; Glenice Pilla; and Larry Pilla]; Midco Communications (LDDS); TeleTech; F&C; FirstTel; TelServ; MCI; Corson County Commission; Thomas Brunner; Gary Brunner; Deanna J. Mickelson; Marjorie Reder; Duane Odle; Baltic Telecom Cooperative; Barbara Mortenson as an individual and a group of telephone users known as the Henry Users Citizens Group. LDDS later filed a petition to withdraw as an intervenor which was granted by the Commission. On March 30, 1995, Senate Bill 240, later codified as SDCL 49-3-59, became effective. The Commission added this statute to the other statutes under which it had asserted its jurisdiction.

On March 29, 1995, the Commission issued an Order for and Notice of Hearing for six regional evidentiary hearings to be held at various locations throughout the state of South Dakota. Notice of said hearings was given to the public by newspaper publications and radio announcements; personal notice was given to all parties to the docket. Pursuant to said Order of the Commission, and subsequent amended Orders, the following regional evidentiary hearings were held:

1. April 17, 1995, at the City Auditorium, 212 Main Street, Mobridge, South Dakota, for public testimony on the sale of the Selby, Gettysburg, Roscoe, Onida, Bowdle, Morristown, Timber Lake, Lemmon, Eureka, Ipswich, McIntosh, and Mobridge exchanges.
2. April 18, 1995, at the Community Center, 1401 LaZelle, Sturgis, South Dakota, for public testimony on the sale of the Nisland, Newell, and Hermosa exchanges.
3. May 1, 1995, at the St. Mary's Hall, 305 West Third, Winner, South Dakota, for public testimony on the sale of the Winner, Burke, Bonesteel, Reliance, Murdo, Lake Andes, Wagner, Gregory, Witten, Clearfield, Presho, and Platte exchanges.
4. May 3, 1995, at the Lake Area Technical Institute, Student Lounge, 230 11th Street NE, Watertown, South Dakota, for public testimony on the sale of the Webster, Clark, Florence, Hayti, Bradley, Willow Lake, Waubay, Castlewood, Summit, Peever, Veblen, Wilmot, Howard, Oldham, Revillo, and South Shore exchanges.
5. May 4, 1995, at the Johnson's Fine Arts Center, Room 134, Northern State University Campus, Aberdeen, South Dakota, for public testimony on the sale of the Britton, Pierpont, Roslyn, Wessington Springs, Mellette, Bristol, Frederick, Hecla, Doland, Wolsey, and Cresbard exchanges.
6. May 5, 1995, at the Alcester High School Gymnasium, Fifth and Iowa, Alcester, South Dakota, for public testimony on the sale of the Marion, Tyndall, Centerville, Viborg, Lesterville, Tabor, Hudson, Tripp, Parkston, Salem, Alcester, Bridgewater, and Canistota exchanges.

On May 1, 1995, U S WEST and the Buyers filed an amended Joint Application. In its amended Joint-Application, U S WEST and the Buyers stated that since the filing of the Joint Application in December, "the sale of several exchanges to certain buyers has been reevaluated by the Buyers." They requested the following changes:

1. In the Agreement with Golden West Telephone Properties, Inc., delete in Exhibit A the Newell exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly;
2. In the Agreement with West River Cooperative Telephone Company, Inc. (Bison), delete in Exhibit A the McIntosh exchange and add the Newell

and Nisland exchanges, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly; and

3. In the Agreement with Cheyenne River Sioux Tribe Telephone Authority, delete in Exhibit A the Nisland exchange and add the McIntosh exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly.

Due to the amended application, the Commission set a new intervention deadline of May 12, 1995. Subsequently, the city of McIntosh and Conson County applied for and were granted intervention. Because the application had been amended, the Commission held another public hearing on May 25, 1995, at the McIntosh School Gymnasium, McIntosh, South Dakota, for public testimony.

At each regional evidentiary hearing, representatives from U S WEST and each purchasing company were present to testify and were available for cross-examination.

On April 5, 1995, the Commission issued a Notice of Hearing setting the final hearing for June 1-2, 1995. All prefiled testimony was required to be filed by May 25, 1995. A pre-hearing conference was held on May 22, 1995.

The final hearing was held on June 1-4, 1995. At said final hearing, 42 witnesses testified and were available for cross-examination, 126 exhibits were offered and received into the record at the hearing, and an additional 19 exhibits were filed by June 19, 1995, which was the deadline set by the Commission for late-filed exhibits.

On June 7, 1995, the Commission issued a Post-hearing Order requesting briefs on certain issues and allowing the submission of Proposed Findings of Fact and Conclusions of Law. On June 19, 1995, the parties submitted late-filed exhibits. On June 23 and July 3, 1995, the parties filed their post-hearing briefs and Proposed Findings of Fact and Conclusions of Law.

On July 13, 1995, at a duly noticed meeting, the Commission unanimously voted to not approve the sale of the McIntosh exchange to Cheyenne River Sioux Tribe Telephone Authority (CRSTTA) which proposed to purchase the McIntosh exchange through its subsidiary, Owl River Telephone, Inc. (Owl River). With regard to the sale of the McIntosh exchange, in conjunction with the sale of all the other exchanges, the Commission has reviewed all exhibits presented at the seven regional evidentiary hearings, and the final hearing occurring in Pierre, and has considered all testimony provided. The Commission having reviewed the evidence of record and being fully informed in the matter makes the following:

#### **FINDINGS OF FACT**

1. U S WEST is a Colorado corporation providing local exchange telecommunications service, interexchange carrier access, intraLATA interexchange telecommunications services, and other telecommunications services throughout South Dakota.

2. On or about December 7, 1994, U S WEST entered into purchase agreements for the sale of 67 local exchanges with 20 local exchange telecommunications companies. On December 20, 1994, U S WEST and the Buyers filed a Joint Application for a Commission Declaration on the Sale and for Proper Accounting Treatment of any Gain. Exhibit 29. U S WEST and the Buyers filed all 20 purchase agreements along with the Joint Application. Exhibits 31-50. One of the purchase agreements entered into was between U S WEST and CRSTTA. Exhibit 32.

3. CRSTTA is a telecommunications company and a division of the Cheyenne River Sioux Tribe. CRSTTA currently provides telecommunications services in South Dakota. Exhibit 22 at page 119.

4. Owl River is a wholly-owned subsidiary of CRSTTA incorporated under the laws of the Cheyenne River Sioux Tribe. Exhibit 22 at page 119. Owl River has no license to do business in the state of South Dakota. Exhibit 22 at pages 145-146.

5. The purchase agreement entered into between CRSTTA and U S WEST states as follows:

Seller and Buyer agree to promptly file any required application and to take such reasonable action as may be necessary or helpful (including, but not limited to, making available witnesses, information, documents, and data requested by the PUC) to apply for and receive approval by the PUC for the transfer of Assets and Authorities to Buyer.

Exhibit 32, Section 6.3, subparagraph D.

6. In the Joint Application filed with the Commission on December 20, 1994, U S WEST and CRSTTA had entered into a purchase agreement where U S WEST proposed to sell the Nisland, Timber Lake, and Morristown exchanges to CRSTTA.

7. A duly noticed public hearing was held at Mobridge, South Dakota, on April 17, 1995, at the City Auditorium, beginning at 8:00 p.m., concerning, along with other sales, the sale of the Timber Lake, Morristown, and McIntosh exchanges. At the time of the hearing, West River Cooperative Telephone, Inc. (West River) was the proposed buyer of the McIntosh exchange.

8. A duly noticed public hearing was held at Sturgis, South Dakota, on April 18, 1995, beginning at 7:00 p.m. M.D.T. concerning, along with other sales, the sale of the Nisland exchange. At the hearing, the Buyers announced that CRSTTA would no longer be purchasing the Nisland exchange. Instead, West River proposed to purchase the Nisland and Newell exchanges and CRSTTA proposed to purchase the McIntosh exchange which West River had originally intended to purchase. Exhibit 23 at pages 5-6.

9. The amended Joint Application setting forth the changes in the buyers of the Nisland, Newell, and McIntosh exchanges was filed with the Commission on May 1, 1995. Exhibit 30. Due to the amendment of the Joint Application, the Commission set a new intervention deadline of May 12, 1995. The city of McIntosh and Corson County applied

for and were granted intervention. The Commission held another public hearing on May 25, 1995, at the McIntosh School Gymnasium, in McIntosh. Testimony was given by members of the public in opposition to the sale of the McIntosh exchange to CRSTTA. Exhibit 28 at pages 118-160. The two main concerns of the public were lack of Commission oversight and loss of tax dollars.

10. On June 1-4, 1995, in Pierre, South Dakota, a final hearing was held concerning all of the proposed exchange sales. Members of the public testified in opposition to and in support of the sale of the McIntosh exchange to CRSTTA. Transcript of Pierre Hearing at pages 707-736, 770-779.

11. The McIntosh exchange is located within the boundaries of the Standing Rock Sioux Reservation. Exhibit 93.

12. CRSTTA maintains that if the sale of the McIntosh exchange to CRSTTA were allowed, the Commission would lose all regulatory control over the McIntosh exchange. Exhibit 28 at page 36.

13. CRSTTA does not pay gross receipts taxes on the telephone exchanges it currently operates. Exhibit 22 at page 123. J. D. Williams, manager of CRSTTA, stated that the state "may impose its gross receipts tax on the income generated from sales to non-Indians and non-members of the area. However, it has no mechanism whereby to force the tribe to collect the tax. The tribe has a sales tax agreement with the state and a similar arrangement may be possible with respect to collecting a gross receipts tax." Exhibit 22 at page 132.

14. CRSTTA proposed a Memorandum of Understanding which provided that CRSTTA would follow the same regulatory procedures found under South Dakota law. Exhibit 145. However, pursuant to that Memorandum of Understanding, the Commission was given no regulatory oversight.

15. The Commission lacks the authority to enter into a tax agreement with a tribal entity. No tax agreement was reached with the state of South Dakota by the close of the record on June 19, 1995.

16. CRSTTA has refused to waive its sovereign immunity in order to provide the Commission with its statutorily mandated regulation of telecommunications services provided by a telecommunications company within the state of South Dakota.

17. CRSTTA has refused to waive its sovereign immunity with regard to the gross receipts tax agreement that it had proposed to enter into negotiations with the state of South Dakota.

18. Local exchange service provided by a telecommunications company is classified as a noncompetitive service. SDCL 49-31-1.1.

19. The South Dakota State Legislature has charged the Commission with important duties in overseeing telecommunications services within the state of South Dakota and

has further vested in the Commission significant powers to protect telecommunications subscribers. SDCL Chapters 49-1, 49-13, and 49-31.

20. If the sale of the McIntosh exchange to CRSTTA were approved, CRSTTA would not recognize the Commission as having regulatory authority over CRSTTA and the McIntosh exchange. Exhibit 28 at page 36.

21. Pursuant to SDCL 49-1-17, the Commission is prohibited from approving a sale which would result in the delegation or transfer of powers and duties vested in the Commission. Any delegation of such powers is classified as a Class 2 misdemeanor.

22. Since CRSTTA maintains that there is no enforcement mechanism that would require CRSTTA to pay gross receipts taxes, approval of the sale would also result in the loss of significant tax revenue for cities, counties, and school districts located within the McIntosh exchange. Exhibits 94, 95, 96, 97A, 97B; Exhibit 28 at pages 126-129, 133-137; Transcript of Pierre Hearing at pages 707-731. In effect, in addition to delegating its own authority, the Commission's action could also result in relinquishing the enforcement authority of the state of South Dakota to collect gross receipts taxes.

23. As CRSTTA has declined to waive its sovereign immunity, the Commission similarly declines to give up its jurisdiction.

24. The Commission rejects the proposed findings of fact and conclusions of law submitted by the parties.

From the foregoing Findings of Fact, the Commission now makes its:

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over U S WEST and CRSTTA and the sale of the McIntosh exchange to CRSTTA pursuant to SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, and 49-31-59. At the final hearing CRSTTA contested the jurisdiction of the Commission pursuant to SDCL 49-31-59 by claiming that it was an ex post facto law. This argument is without merit since ex post facto applies only to criminal laws and laws that assess penalties. Delano v. Pertys, 520 N.W.2d 606, 608 (S.D. 1994). Moreover, the Joint Application was amended on May 1, 1995, which was after the passage of SDCL 49-31-59. In addition, the purchase agreement entered into between U S WEST and CRSTTA specifically provides that U S WEST and CRSTTA would cooperate in obtaining Commission approval for the transfer of assets and authority to CRSTTA. Finally, CRSTTA did not contest, at any of the hearings, the jurisdiction of the Commission pursuant to the other statutes under which the Commission asserts its jurisdiction.

2. The hearings held by the Commission relative to this matter were contested case hearings pursuant to SDCL Chapter 1-26.

3. The Commission finds that the approval of the sale of the McIntosh exchange to CRSTTA would constitute an improper delegation of authority pursuant to SDCL 49-1-17 and, therefore, this Commission has no authority to approve the sale of the exchange.
4. The Commission lacks the authority to enter into a tax agreement with a tribal entity.
5. The Commission finds that approval of the sale of the McIntosh exchange would have significant, adverse tax consequences to the taxpayers located in the cities, counties, and school districts within the McIntosh exchange due to CRSTTA's position that the state lacks the authority to enforce the collection of taxes on the Reservation.
6. The Commission rejects the proposed findings of fact and conclusions of law submitted by the parties.

Pursuant to SDCL Chapter 1-26, the Commission hereby enters its final decision in this docket. It is therefore

**ORDERED** that the sale of the McIntosh exchange to the Cheyenne River Sioux Tribe Telephone Authority, through its subsidiary Owl River Telephone, Inc. is not approved; and it is

**FURTHER ORDERED** that the proposed findings of fact and conclusions of law submitted by the parties are rejected.

Pursuant to SDCL 1-26-32, this Order becomes effective 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 31<sup>st</sup> day of July, 1995.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>[Signature]</u>
Date:	<u>7-31-95</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

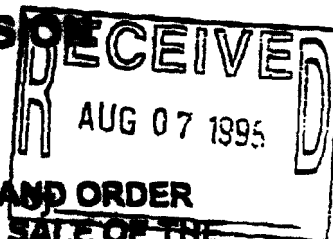
[Signature]  
KENNETH STOFFERAHN, Chairman

[Signature]  
JAMES A. BURG, Commissioner

[Signature]  
LASKA SCHOENFELDER, Commissioner



# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA



IN THE MATTER OF THE SALE OF CERTAIN )	DECISION AND ORDER
TELEPHONE EXCHANGES BY U S WEST )	REGARDING SALE OF THE
COMMUNICATIONS, INC. TO CERTAIN )	TIMBER LAKE EXCHANGE
TELECOMMUNICATIONS COMPANIES IN )	
SOUTH DAKOTA )	TC94-122 - TIMBER LAKE

## PRELIMINARY STATEMENT

On December 20, 1994, a Joint Application was filed by U S WEST Communications, Inc. (U S WEST), and twenty telecommunications companies (Buyers) requesting that the South Dakota Public Utilities Commission (Commission) approve the sale by U S WEST of 67 local telecommunications exchanges to the Buyers or their affiliates. Specifically, the filing sought:

1. A declaration that the sale and transfer of the exchanges do not require Commission approval or in the alternative that the Commission knows of no reason why the sale and transfer should not occur; and
2. An order from the Commission that U S WEST's gain from the sale be booked to Account 7350 of the Uniform System of Accounts (USOA) as nonoperating income not available for ratemaking purposes.

The Commission assumed jurisdiction over this docket pursuant to its authority under SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, and 49-31-20. The Commission set an intervention deadline of January 25, 1995. Subsequently, the following parties applied for and were granted intervention: AT&T Communications of the Midwest (AT&T); South Dakota Radio Common Carriers [composed of Pierre Radio Paging and Telephone, Inc.; Nantek Communications, Inc.; B&L Communications; Mitchell Two Way Radio; Nelson Electronics, Inc.; Booker Communications; Dakota Electronics; Rees Communications; V & M Radio, Inc.; Frey's Electronics; and Wilbank Communications]; Roger D. McKellips; City of Mobridge; Walworth County; Doug Scott; Alcester Telephone System User's Group [composed of Phyllis Bergdale; Bernard Bergdale; Jay Clark; Cleo Clark; Wendell Solberg; Kathy Solberg; Dennis Jones; Robin Jones; Ronald Treiber; Becky Treiber; Gary McKellips; Deb McKellips; David Broadwell; Kathy Broadwell; Donovan Larson; Marlys Larson; Glenice Pilla; and Larry Pilla]; Midco Communications; LDDS; TeleTech; TCIC; FirstTel; TelServ; MCI; Corson County Commission; Thomas Brunner; Gary Brunner; Deanna J. Mickelson; Marjorie Reder; Duane Odle; Battic Telecom Cooperative; Barbara Mortenson as an individual and a group of telephone users known as the Henry Users Citizens Group. LDDS later filed a petition to withdraw as an intervenor which was granted by the Commission. On March 30, 1995, Senate Bill 240, later codified as SDCL 49-31-59, became effective. The Commission added this statute to the other statutes under which it had asserted its jurisdiction.